



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 26 2015

REPLY TO THE ATTENTION OF:  
WC-15J

**CERTIFIED MAIL 7009 1680 0000 7675 2244**  
**RETURN RECEIPT REQUESTED**

FOIA Exemption (b) (6)

FOIA Exempt Farms  
4367 Lark Road  
Denmark, Wisconsin 54208

Subject: Administrative Order on Consent for Compliance Pursuant to 33 U.S.C. §§ 1318  
and 1319(a)  
Docket No. V-W-15-AO-04

Dear FOIA Exemption (b) (6):

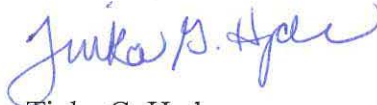
Enclosed you will find the final Administrative Order on Consent (Agreement) to mitigate potential violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, that the U.S. Environmental Protection Agency discovered at the FOIA Exempt Farms facility in Denmark, Wisconsin.

As you know, on April 30, 2014, the EPA inspected your facility. At the time of the inspection, EPA identified potential CWA violations. During the negotiations for the Agreement, you voluntarily installed permanent measures to prevent discharges of manure and process wastewater from the Cattle Walkway and from any spilled milk from the area where the tankers are parked. You also removed the tree that was growing in the berm of WSF #3.

The Agreement negotiated with you outlines the remaining compliance measures to permanently capture all manure and process wastewater from operations at your facility. Protecting water quality is a high priority of EPA. Pollutants such as excessive nutrients and pathogens discharged to waterways from animal feeding operations contribute to poor water quality and impairment of uses of those waterways.

If you have any questions or concerns, please contact Joan Rogers, at (312) 353-8752 or rogers.joan@epa.gov, or your legal counsel may contact Reginald Pallesen, Associate Regional Counsel, at (312) 886-0555 or Pallesen.reginald@epa.gov.

Sincerely,



Tinka G. Hyde  
Director, Water Division

Enclosure

cc: Thomas Bauman, Wisconsin Department of Natural Resources  
Brad Holtz, Wisconsin Department of Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**FOIA Exempt Farms  
4367 Lark Road  
Denmark, Wisconsin 54208**

**RESPONDENT**

)  
) **PROCEEDING UNDER**  
) **SECTIONS 308(a) and 309(a)**  
) **OF THE CLEAN WATER ACT**  
)  
)  
) **DOCKET NO.: V-W-15-AO-04**  
)

**BACKGROUND AND FINDINGS OF VIOLATION**

**I. STATUTORY AUTHORITY**

1. The following Administrative FINDINGS OF VIOLATION, CONSENT AGREEMENT and CONSENT ORDER FOR COMPLIANCE (Order) is issued to and accepted by **FOIA Exempt Farms** (Respondent) under the authority of the Administrator of the U.S. Environmental Protection Agency provided by Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 5, who has redelegated this authority to the Director of the Water Division, U.S. EPA, Region 5.
2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States by any person except in compliance with, among other provisions, Section 402 of the CWA, 33 U.S.C. § 1342.
3. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that whenever the Administrator finds a person in violation of Section 301(a) of the CWA or a condition in a permit issued under Section 402 of the CWA, she may issue an order requiring that person to comply with the provisions of the CWA and the requirements of the permit.
4. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and EPA regulations at 40 Code of Federal Regulations (C.F.R.) Part 122, authorize the Administrator to require the owner or operator of any point source to establish and maintain records, make reports, install, use and maintain monitoring equipment, sample effluent and provide any other information she may reasonably require to carry out the objectives of the CWA.
5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) by which the Administrator may issue permits for the discharge of pollutants to the waters of the United States subject to certain conditions.
6. EPA has authorized the State of Wisconsin to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Wisconsin Department of Natural Resources (WDNR) is the NPDES permitting authority for the State of Wisconsin. WDNR refers to

the NPDES permits that it issues as "Wisconsin Pollutant Discharge Elimination System (WPDES) permits." EPA retains the authority to enforce the CWA in Wisconsin.

## II. DEFINITIONS

7. All terms used but not otherwise defined in this Order shall have the meaning provided in the CWA and EPA regulations promulgated under the CWA.
8. "Animal feeding operation" or "AFO" means, among other things, "a lot or facility where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and, (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." See 40 C.F.R. § 122.23(b)(1).
9. "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as, *inter alia*, a Large CAFO. Two or more AFOs under common ownership are considered to be a single AFO for the purpose of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. See 40 C.F.R. § 122.23(b)(2).
10. "Discharge" or "Discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. See Section 502(12) and (16) of the CWA, 33 U.S.C. § 1362(12) and (16); 40 C.F.R. § 122.2.
11. "Land application area" means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. See 40 C.F.R. § 122.23(b)(3).
12. "Large CAFO" means an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following ranges: 1,000 cattle other than mature dairy cows or veal calves; 700 mature dairy cows, whether milked or dry; 1,000 veal calves; 2,500 swine each weighing 55 pounds or more; 10,000 swine each weighing less than 55 pounds; 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system; 82,000 laying hens if the AFO uses other than a liquid manure handling system; 30,000 ducks if the AFO uses other than a liquid manure handling system; or 5,000 ducks if the AFO uses a liquid manure handling system. See 40 C.F.R. § 122.23(b)(4).
13. "Manure" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal. See 40 C.F.R. § 122.23(b)(5).
14. "Navigable waters" means the waters of the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
15. "Nutrient management plan" means the plan that contains the required elements as described in 40 C.F.R. § 122.42(e)(1).

16. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
17. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
18. The term "point source" means, among other things, any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
19. The term "pollutant" is defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."
20. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. See 40 C.F.R. § 122.23(b)(7).
21. "Production area" means that part of the site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stock piles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities. See 40 C.F.R. § 122.23(b)(8).
22. "Site" means the facility or facilities owned or operated by Respondent located at or about 4367 Lark Road, Denmark, Wisconsin, 54208, including but not limited to the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.



23. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
- a. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
  - b. All interstate waters;
  - c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), ...the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
  - d. All impoundments of waters otherwise defined as waters of the United States under this definition; and
  - e. Tributaries of waters identified in subparagraphs (a) through (d) of this definition.

### **III. FINDINGS**

24. Respondent is a person who owns or operates a dairy cow facility located at the Site.
25. The Site is an animal feeding operation because:
- a. the Site includes lots or facilities where animals have been, are or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
  - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
26. The Site is a large CAFO because it stables or confines over 700 mature dairy cows, whether milked or dry. 40 C.F.R. § 122.23(b)(4).
27. On June 5, 2013, Respondent was issued a WPDES permit, number WI-0065196-01-0, for the discharge of pollutants from the Site.
28. On April 30, 2014, personnel from EPA conducted an inspection at the Site (the Inspection). A copy of the report generated by EPA as a result of the Inspection (Inspection Report) is included as Attachment 1 to this Order.
29. During the Inspection, EPA personnel identified the following sources of discharges and permit violations:
- a. Manure and process wastewater from the Calf Hutch Area to the roadside ditch west of Fairview Road via surface runoff. The roadside ditch flows north to an

intermittent section of Devils River. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.

- b. Manure and process wastewater from the concrete open lots of the Calf Barn through the hole in the north wall of the concrete bunker to the roadside ditch west of Fairview Road via surface runoff. The roadside ditch flows north to an intermittent section of Devils River. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- c. Manure and process wastewater from the concrete open lots of the Superhuts through the hole in the north wall of the concrete bunker to the roadside ditch west of Fairview Road via surface runoff. The roadside ditch flows north to an intermittent section of Devils River. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- d. Manure and process wastewater from the east side of the concrete open lots of the Calf Barn to the roadside ditch west of Fairview Road via surface runoff. The roadside ditch flows north to an intermittent section of Devils River. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- e. Feed from the feed alley for the Calf Barn to the roadside ditch west of Fairview Road via surface runoff. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- f. Process wastewater from silage that is stacked too far on the west side of the Silage Pad via the roadside ditch on the east side of Fairview Road. The roadside ditch flows north to an intermittent section of Devils River. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- g. Manure and process wastewater from the Cattle Walkways to the intermittent unnamed tributary via holes in the walls of the Cattle Walkways that allow manure and process wastewater to flow to storm water channels in the South Yard. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- h. Process wastewater from milk spilled from the Milk Tank to the intermittent unnamed tributary via the storm water channels in the South Yard. This is also a violation of Section 1.1 of WPDES Permit No. WI-0065196-01-0.
- i. Process wastewater from silage stored in the Old Feed Storage Area to the intermittent unnamed tributary via surface flow with precipitation. This is also a violation of Section 1.1 and Section 1.7.2 of WPDES Permit No. WI-0065196-01-0.
- j. Manure and process wastewater from the stack of used bedding in the concrete bunker in the Old Feed Storage Area to the intermittent unnamed tributary via

surface flow with precipitation. This is also a violation of Section 1.1 and Section 1.7.2 of WPDES Permit No. WI-0065196-01-0.

- k. Daily inspections for leakage of all water lines that potentially come into contact with pollutants or drain to storage or containment structures or runoff control systems are not being conducted and records of these inspections are not maintained. This is also a violation of Section 1.6.1 of WPDES Permit No. WI-0065196-01-0.
- l. Weekly inspections to ensure proper operation of all storm water diversion devices and devices channeling contaminated runoff to storage or containment structures are not being conducted and records of these inspections are not maintained. This is also a violation of Section 1.6.1 of WPDES Permit No. WI-0065196-01-0.
- m. Weekly inspections of liquid impoundments are not being conducted and records of these inspections are not maintained. This is also a violation of Section 1.6.1 of WPDES Permit No. WI-0065196-01-0.
- n. Quarterly inspections of the production area are not being conducted and records of these inspections are not maintained. This is also a violation of Section 1.6.1 of WPDES Permit No. WI-0065196-01-0.
- o. Reports of weekly depth of manure were generated for the annual report to WDNR without the data for these being collected.
- p. Although the annual report listed a date for when the liquid manure storage structures were emptied to the point that they had 180 days of storage capacity, inspections of the depth of manure in the liquid storage structures were not being conducted. This is a violation of Section 1.3.1 and 1.3.3 of WPDES Permit No. WI-0065196-01-0.
- q. Permanent markers, or staff gauges are not installed in the manure storage ponds as required by Section 1.3.1 of WPDES Permit No. WI-0065196-01-0.

30. During the Inspection, EPA observed these areas of concern:

- a. Process wastewater from silage stored on the Silage Pad is allowed to flow to an agricultural field. The nutrients in the wastewater are not accounted for in the Nutrient Management Plan (NMP).
- b. Manure and process wastewater from the Heifer Lot, concrete manure bunker and young stock barn south of the Silage Pad is allowed to flow to an agricultural field. The nutrients in the wastewater are not accounted for in the NMP.



- c. Manure and process wastewater from the feedlots at the Cooperstown Site were allowed to flow to agricultural fields. The nutrients in the wastewater are not accounted for in the NMP.
  - d. Berms around WSF #1, WSF #2 and WSF #4 were not vegetated.
  - e. Cattle have access to the berms around WSF #4.
  - f. There was a tree growing out of the berm of WSF #3.
31. During the Inspection, surface runoff from the Site was observed flowing through pathways to either an intermittent unnamed tributary west of the Site or to roadside ditches on either side of Fairview Road. The tributary flows north and flows into Devils River which flows from west to east and is considered intermittent at this point. On the east side of the main facility, surface flow goes to a roadside ditch on the west sides of Fairview Road and then north to the intermittent Devils River. Devils River becomes classified as perennial approximately one mile to the east, at County Road Nn. On the east side of Fairview Road, flow either goes into the roadside ditch on the east side of Fairview Road or to the east to an agricultural field. Once listed as perennial, Devils River flows approximately 9.2 miles until it flows into the West Twin River. The West Twin River is a Traditional Navigable Water from seven miles above mouth between sections 19 and 30, T. 20 N., R. 24 E., Manitowoc County. The West Twin River flows to Lake Michigan, which is a Traditional Navigable Water throughout.
32. The West Twin River is a Traditional Navigable Water from seven miles above mouth between sections 19 and 30, T. 20 N., R. 24 E., Manitowoc County. The West Twin River flows to Lake Michigan, which is a Traditional Navigable Water throughout. Devils River and West Twin River are each a water of the United States.
33. The Site is a point source.

#### **IV. FINDINGS OF VIOLATION**

34. The facts stated in Paragraphs 24 through 33 above are herein incorporated.
35. Respondent's facility discharges wastewater into Devils River which are a violation of the Respondent's WPDES permit.

#### **V. CONSENT AGREEMENT**

36. The Complainant and Respondent hereby agree as follows:
- a. Solely for the purposes of this Order, Respondent admits the jurisdictional allegations of the Complaint.
  - b. Respondent neither admits nor denies the factual allegations set forth in Section III, which is incorporated herein by reference.

37. Solely for purposes of this Order, Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in Sections III. Findings and IV. Findings of Violation.
38. So as to resolve the disputes between the parties in this matter, Respondent consents to the issuance of this Order. Respondent agrees that it will complete the compliance activities on or before the dates set forth within or established pursuant to this Order.
39. Respondent and Complainant agree to bear their own costs and attorneys' fees incurred as a result of this Order.
40. Each signatory to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order.
41. Nothing contained in this Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

## **VI. ORDER FOR COMPLIANCE ON CONSENT**

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions to come into compliance with the CWA:

### **A. Compliance Measures**

42. Upon the effective date of this Order, there shall be no unpermitted discharges from the Site.
43. Upon the effective date of this Order, Respondent shall monitor the measures that have been established around the Calf Hutch Area, to verify that process wastewater from this area does not reach the roadside ditch. If it is not possible to prevent process wastewater from reaching the roadside ditch with the measures that have already been established, interim measures must immediately be installed and a permanent solution to prevent discharges of process wastewater from the Calf Hutch Area must be developed and implemented within 30 days.
44. Upon the effective date of this Order, Respondent shall install interim measures to prevent discharges of manure and process wastewater from the concrete open lots and feed alley of the Calf Barn.
45. By August 31, 2015, Respondent shall install permanent measures to contain all the manure and process wastewater from the open lots of the Calf Barn.
46. By July 31, 2015, Respondent shall install concrete mountable curbing on the east and south sides of the open lots of the Calf Barn.

47. Upon the effective date of this Order, Respondent shall install interim measures to prevent discharges of manure and process wastewater from the concrete open lots of the Superhuts.
48. By August 31, 2015, Respondent shall install permanent measures to contain all the manure and process wastewater from the Superhut area.
49. Upon the effective date of this Order, Respondent shall not allow silage to be placed on the Silage Pad such that it overhangs the concrete pad.
50. Upon the effective date of this Order, Respondent shall monitor the silage on the west side of the Silage Pad for the presence of silage leachate entering the roadside ditch on the east side of Fairview Road. If any silage leachate is identified, Respondent shall immediately install interim measures and a permanent solution to prevent discharges of process wastewater from the Silage Pad must be developed and implemented within 30 days.
51. Upon the effective date of this Order and until the silage has been completely removed, Respondent shall install interim measures to prevent a discharge of process wastewater from the silage stored in the Old Feed Storage Area.
52. By April 30, 2015, Respondent shall remove all silage from the Old Feed Storage Area and shall abandon this area for the storage of feed.
53. Upon the effective date of this Order, Respondent shall maintain the established controls to prevent discharges of the manure and process wastewater from the stack of manure and used bedding stored in the concrete bunker in the Old Feed Storage Area.
54. By July 31, 2015, Respondent shall complete the installation of a new concrete floor and reception pit in the concrete bunker in the Old Feed Storage Area as a permanent measure for the prevention of discharges from the storage of manure and used bedding in the concrete bunker.
55. By May 31, 2015, Respondent shall install permanent capacity depth markers in all the waste storage structures in compliance with the WPDES permit number WI-0065196-01-0.
56. By May 31, 2015, Respondent shall seed the berms of WSF #1, WSF #2 and WSF #4.
57. Upon effective date of this Order, Respondent shall not allow cattle to have access to the berms of WSF #4 until the vegetation on the berms has been established. Thereafter, Respondent shall regularly monitor the berms of WSF #4 to make sure the cattle do not denude the berms of vegetation.
58. Upon the effective date of this Order, the Respondent shall conduct all the inspections that are required by the Respondent's WPDES permit.

59. Respondent shall correct any deficiencies identified through the inspections conducted pursuant to this section as soon as possible.
60. Respondent shall prepare and maintain records of each inspection as required by the Respondent's WPDES permit.
61. Within thirty (30) calendar days of the effective date of this Order, Respondent shall develop an Emergency Response Plan and shall post at the Site, procedures to effectively identify and respond to any spill or discharge to waters of the United States, and shall ensure that all employees are aware of, and follow, those procedures. The posted procedures shall contain detailed response instructions which shall include, but not be limited to, the names of officials to be notified, state and federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.
62. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the Site, and any such discharges not otherwise authorized by law are subject to enforcement. Upon the effective date of this Order and until Respondent receives notification from EPA that Respondent has complied with all requirements of this Order, if for any reason Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge and immediately notify the EPA by contacting Joan Rogers by telephone at 312-886-2785, and email at rogers.joan@epa.gov. Respondent must also immediately notify the WDNR at 1-800-943-0003. In addition, Respondent must document the following information and submit a written report containing such information to EPA and WDNR within five (5) calendar days of becoming aware of the discharge:
  - a. the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;
  - b. a description of the area receiving the discharge (*i.e.*, field, ditch, stream, or other description);
  - c. the specific location of the discharge;
  - d. the period of discharge, including exact begin and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;
  - e. steps taken or to be taken to respond to, contain, and mitigate the discharge;
  - f. corrective action taken to prevent recurrences of the discharge; and
  - g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas, and water quality.

**B. Record Retention and Reporting**

63. Upon the effective date of this Order, Respondent shall maintain at the Site and shall make available to EPA and WDNR personnel upon request copies of records created pursuant to this Order. Such records include:
- a. a copy of the nutrient management plan;
  - b. all records required by the nutrient management plan;
  - c. reports of the depth of the manure and process wastewater in storage structures as indicated by the permanent capacity depth markers;
  - d. records documenting the current design of any storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of calendar days of storage capacity;
  - e. records of the date, time, and estimated volume of any overflow;
  - f. all results of sampling required by this Order;
  - g. all land application records required by this Order;
  - h. records required by this Order documenting transfers of manure, litter, or process wastewater to other persons;
  - i. the criteria and procedures for the solids removal and dewatering of storage structures required by this Order;
  - j. records of materials removed from storage structures; and
  - k. inspection records required by this Order.
64. Within thirty (30) calendar days after the effective date of this Order, Respondent shall submit to EPA and WDNR the following documentation concerning the compliance measures implemented pursuant to Section VI.A. of this Order:
- a. documentation (*e.g.*, as-built diagrams, photographs, affidavits, etc.) showing that Respondent completed installation of any compliance measures that required installation; and
  - b. an accounting of the costs incurred by Respondent to install, implement, and maintain the compliance measures.
65. Respondent shall submit an annual report to EPA and WDNR not later than January 31 of each calendar year following the effective date of this Order. In addition to the information required in the annual report by the Respondent's WPDES permit number

WI-0065196-01-0, Respondent shall include the following information for the previous calendar year prior to submittal of that annual report:

- a. the maximum number and type of animals confined, whether in open confinement or housed under roof;
- b. the estimated amount of total manure, litter, and process wastewater generated at the Site in the previous calendar year;
- c. the estimated amount of total manure, litter, and process wastewater transferred to another person from the Site in the previous calendar year (in tons or gallons);
- d. the total number of acres for land application covered by the nutrient management plan;
- e. the total number of acres under the control of Respondent that were used for land application of manure, litter, and process wastewater in the previous calendar year;
- f. a summary of all manure, litter, and process wastewater discharges from the production area that occurred in the previous calendar year, including the date, time, and approximate volume of such discharges; and
- g. a statement indicating whether the current version of the nutrient management plan was developed or approved by a certified nutrient management planner, the date that the plan was completed and the name of the certified nutrient management planner .

## **VII. SUBMITTALS**

66. All submittals and copied correspondence concerning this Order must be sent to the following addresses:

U.S. EPA Environmental Protection Agency  
Attn: Joan Rogers  
Water Enforcement and Compliance Assurance Branch  
Water Division, WC-15J  
77 West Jackson Boulevard  
Chicago, Illinois 60604



67. Any documents or notifications required by this Order to be submitted to WDNR shall be submitted by Respondent to the following address:

Wisconsin Department of Natural Resources  
Agricultural Runoff Program  
Attn: Thomas Bauman  
WT/3, 101 South Webster Street  
PO Box 7921  
Madison, Wisconsin 53707

68. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

69. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

#### Confidentiality of Submissions

70. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA when that person submits the information. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and information in NPDES permit applications is not entitled to confidential treatment. 40 C.F.R. § 122.7. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the site. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B.

71. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice.
72. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

#### **VIII. EFFECTIVE DATE**

73. This Order is effective on the date of signature by the Director of the Water Division.

#### **IX. GENERAL PROVISIONS**

74. This Order is an Administrative Order on Consent issued under Section 309(a)(3) of the CWA, 42 U.S.C. § 1319(a)(3).
75. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, state or local laws, regulations, ordinances, permits, or licenses.
76. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.
77. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d), or (g), for any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms shall be deemed an election by the EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.
78. EPA and Respondent recognize that this Order has been negotiated in good faith and that neither consenting to the terms of this Order, nor the actions undertaken by Respondent in accordance with this Order, constitutes an admission of liability.
79. Respondent agrees to the terms of this Order and further agrees that it will not contest the basis or validity of this Order.
80. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

81. The terms of this Order are binding on Respondent, its assignees and successors. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice and to whom ownership is being transferred including the legal name and current contact information for the transferee.
82. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.
83. Respondent must ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order within 14 days after the Effective Date of this Order or after the date of such retention. Respondent will be responsible for any noncompliance with this Order.
84. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may:
- a. Assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$16,000 per day for each violation up to a total of \$177,500 that occurred after January 12, 2009, through December 6, 2013. An administrative penalty action may total up to \$187,500 for violations that occurred after December 6, 2013;
  - b. Seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$37,500 per day for each violation that occurred after January 12, 2009; and
  - c. Seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).
85. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq. because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.
86. EPA may use any information submitted under this Order in an administrative, civil judicial or criminal action.
87. No modification or withdrawal of this Order shall be effective unless and until it is issued in writing by EPA.

**X.     CERTIFICATION OF COMPLETION**

88.     Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit to EPA a written certification of completion describing all actions taken to comply with all requirements of this Order.
89.     After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 88, EPA may notify Respondent whether all requirements of this Order have been satisfied.
90.     This Order shall be effective until EPA notifies Respondent that Respondent has complied with all requirements of this Order.

ADMINISTRATIVE CONSENT ORDER

In the Matter of: <sup>FOIA Exemption (b)</sup> Farms  
Docket No. V-W-15-AO-04

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 5 day of February, 2015.

For Respondent

**FOIA Exemption (b) (6)**

By:

Title: owner <sup>FOIA Exemption (b) (6)</sup> FARMS

It is so ORDERED and Agreed this 26 day of February, 2015.

By: Tinka G. Hyde  
Tinka G. Hyde  
Director, Water Division  
United States Environmental Protection Agency  
Region 5